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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 RICKEY WARD,

12 Plaintiff,

13 vs.
14

15 STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a corporation,
16 DOES I through X, inclusive and ROE
CORPORATIONS I through X, inclusive,
17

18 Defendant.

CASE NO.: 2:12-cv-00835-APG-VCF

**ORDER GRANTING STATE FARM'S
MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFF'S CLAIMS FOR "BAD
FAITH," BREACH OF NEVADA UNFAIR
INSURANCE CLAIMS PRACTICES ACT,
AND PUNITIVE DAMAGES**

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20 Before the Court is defendant State Farm's Motion for Summary Judgment on Plaintiff's
21 Claims for "Bad Faith," Breach of Nevada Unfair Insurance Claims Practices Act, and Punitive
22 Damages [Dkt. #28]. State Farm filed its Motion on December 19, 2012. Pursuant to LR 7-2,
23 Plaintiff was required to file an Opposition to the Motion by January 3, 2013. To date, no
24 Opposition has been filed. Pursuant to LR 7-2(d), the failure to file an opposition to a motion may
25 be deemed consent to the granting of the motion. For that reason, and for the reasons set forth
26 below, the Motion is granted.
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FINDINGS OF FACT

Pursuant to F.R.C.P. 56(c), the following undisputed material facts support the granting of State Farm's motion.

1. In approximately 1999 or 2000, Ward's right femur was shattered by a gunshot. Screws were inserted in Ward's hip and knee, along with a rod from his knee to hip. Ward was hospitalized for two months at that time. As a result of the gunshot injury, Ward was declared totally disabled and unable to work, and has received social security disability benefits as a result. In the six months prior to August, 2010 (the date of the accident involved in this case), Ward made multiple complaints of back and hip pain to Dr. Wichman, his primary care physician, whose recorded diagnosis was chronic hip and low back pain.

2. On August 7, 2010, Mr. Ward was a passenger in a 1998 Ford Mustang which was traveling westbound on Charleston Boulevard and attempting to make a left turn. James Lester, driving a 1996 Dodge pickup, failed to decrease his speed and collided with the right rear of the Mustang (the "Accident"). Mr. Lester, the responsible driver, was insured by State Farm with liability limits of \$25,000 for "each person," up to a total of \$50,000 for "each occurrence." State Farm tendered the policy limits of \$25,000 to Mr. Ward in August, 2009.

3. At the time of the Accident, the Mustang in which Mr. Ward was a passenger likewise was insured under a State Farm auto policy, Policy No. 58 1567-B05-28 (hereafter the "Policy"). That Policy included medical payments coverage of \$5,000 and UM/UTM limits of \$100,000/\$300,000. Ward, as a passenger in the Mustang, qualified as an insured under the Policy.

4. Ward claimed to have sustained neck pain, low back pain and right hip pain as a result of the Accident. Ward initially treated with Peter Catlett D.C. from August 11, 2009 to September 30, 2009. After a 2-1/2 month gap in treatment, Mr. Ward returned to Dr. Catlett and treated with him through July 29, 2011.

5. On August 24, 2010, Ward was evaluated by Dr. Raimundo Leon, a pain management physician who recommended continued conservative management.

1 6. On October 7, 2010, Ward's counsel sent State Farm medical bills and limited records
2 from: (1) University Medical Center (\$11,690); (2) Desert Radiologists (\$1,119); (3) Thomas
3 Shang, M.D. (\$300); and (4) Peter Catlett, D.C. (\$1,617). Counsel requested medical payments
4 benefits under the Policy. On October 19, 2010, State Farm paid the medical payment limits of
5 \$5,000.

6 7. On December 10, 2010, Ward's counsel provided the names of additional medical
7 providers, claimed Ward's medical specials were now \$20,517.79, and demanded settlement of
8 Ward's UIM claim. State Farm timely evaluated the claim, applied the applicable offsets to the
9 claim value, and offered \$5,000 to settle Ward's claim.

10 8. On January 11, 2011, Ward sought pain management from Dr. Alain Coppel, who
11 recommended lumbar facet joint injections, which were performed on February 4, 2011 and again
12 on September 2, 2011.

13 9. On March 14, 2013, Ward's counsel provided additional records and bills and demanded
14 the UIM policy limits of \$100,000. State Farm timely evaluated the additional records, applied
15 the applicable offsets to the claim value, and offered \$20,000 to settle Ward's claim. On May 3,
16 2011 Ward's counsel rejected the offer and again demanded the policy limits.

17 10. On May 13, 2011, State Farm increased its offer to \$25,000 based on new information
18 which Ward's counsel had provided. State Farm indicated it would consider additional
19 documentation and requested that any further submission include Ward's prior medical records.

20 11. On May 25, 2011, Ward's counsel rejected the \$25,000 offer and enclosed a medical
21 authorization for State Farm to collect Ward's prior medical records. On May 26, 2013, State
22 Farm requested a list of Ward's prior medical providers. Upon receipt, State Farm ordered
23 records from Ward's prior medical providers.

24 12. On October 25, 2011, and December 19, 2011, Ward's counsel sent additional medical
25 bills and records to State Farm, asserting Ward's medical specials had increased (to \$56,931.70 in
26 December) and again demanding the policy limits. State Farm timely evaluated the additional
27 records, as well as the records obtained from UMC Primary Care, which included Ward's
28 treatment for "chronic" low back pain and hip pain at severity levels of 7-9 out of 10 in the

1 months immediately preceding the Accident. State Farm noted that at least half the medical
2 specials were related to low back and hip pain, symptoms which pre-dated the accident, and that
3 Ward's post-accident pain levels were the same or less than those reported prior to the Accident.
4 Giving partial consideration to past pain and suffering related to the hip and back, State Farm
5 evaluated the claim to be worth \$75,000 to \$80,000, applied the applicable offsets, and offered
6 Ward \$45,000 to settle his claim. State Farm requested that Ward's counsel contact State Farm to
7 discuss Ward's injuries and treatment.

8 13. On April 5, 2012, Ward filed suit against State Farm. On June 19, 2012, State Farm
9 authorized an impasse payment to Ward of \$45,000, which was mailed to Ward's counsel on July
10 2, 2012.

11 14. During the pendency of this litigation, State Farm received and evaluated Ward's initial
12 disclosures (including records of Ward's ongoing medical treatment), Ward's discovery
13 responses, Ward's deposition transcript, and surveillance video of Mr. Ward. State Farm also
14 retained Joseph Schifini, MD to perform a medical examination of Ward and considered his
15 report and addendums thereto.

16 LEGAL DETERMINATIONS

17 Pursuant to F.R.C.P. 56(c), the following are the legal determinations supporting the
18 granting of State Farm's motion.

19 1. Summary judgment may be granted if the pleadings, depositions, answers to
20 interrogatories, and admissions on file, together with affidavits, if any, show that there is no
21 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
22 matter of law. *See* Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322
23 (1986). The moving party bears the initial burden of showing the absence of a genuine issue of
24 material fact. *See Celotex*, 477 U.S. at 323.

25 2. The burden then shifts to the nonmoving party to set forth specific facts
26 demonstrating a genuine factual issue for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio*
27 *Corp.*, 475 U.S. 574, 1986); Fed. R. Civ. P. 56(a). "[U]ncorroborated and self-serving
28 testimony," without more, will not create a "genuine issue" of material fact precluding summary

1 judgment. *Villiarimo v. Aloha Island Air Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). Summary
2 judgment shall be entered “against a party who fails to make a showing sufficient to establish the
3 existence of an element essential to that party's case, and on which that party will bear the burden
4 of proof at trial.” *Celotex*, 477 U.S. at 322.

5 3. Pursuant to Local Rule 7-2(d), the failure to file an opposition to a motion may be
6 deemed consent to the granting of that motion.

7 4. Under Nevada law, an insured must establish the following elements to be legally
8 entitled to UIM policy proceeds: (1) fault on the part of the uninsured/underinsured motorist; and
9 (2) the extent of damages caused by the uninsured/underinsured motorist. *Pemberton v. Farmers*
10 *Ins. Exch.*, 109 Nev. 789, 858 P.2d 380, 382 (1993).

11 5. Under Nevada law, an insurer acts in bad faith when it knows or recklessly
12 disregards the fact that there is no reasonable basis for disputing coverage. *Pioneer Chlor Alkali*
13 *Co., Inc. v. Nat'l Fire Ins. Co. of Pittsburgh, Pa.*, 863 F. Supp. 1237, 1242 (D. Nev. 1994). The
14 Supreme Court of Nevada “has defined bad faith as ‘an actual or implied awareness of the absence
15 of a reasonable basis for denying benefits of the [insurance] policy.’” *Allstate Ins. Co. v. Miller*,
16 125 Nev. 300, 308, 212 P.3d 318, 324 (2009) (quoting *Am. Excess Ins. Co. v. MGM*, 102 Nev.
17 601, 605, 729 P.2d 1352, 1354–55 (1986)).

18 6. “When there is a genuine dispute regarding an insurer’s legal obligations, the
19 district court can determine [as a question of law] if the insurer’s actions were reasonable.” *Id.* at
20 317, 212 P.3d at 329.

21 7. A reasonable dispute between an insured and an insurer over the amount of policy
22 benefits to be paid cannot, as a matter of law, support a claim for bad faith.

23 8. State Farm and Ward disagree as to the reasonable value of Ward’s claim.
24 Considering Ward’s injury, medical specials, and prior medical conditions, State Farm’s valuation
25 of Ward’s injuries was not unreasonable.

26 9. Ward has failed to present any evidence to support a finding that State Farm (1)
27 acted unreasonably, (2) knew or recklessly disregarded that there was no reasonable basis for its
28 conduct, or (3) lacked a reasonable basis for its evaluation of the claim.

1 10. N.R.S. 686A.310 lists specific acts which, if proven to have occurred and proven to
2 have caused damages, can form the basis for liability to the insured. Here, Ward has not met his
3 burden of establishing any facts or inferences from which a jury could conclude that State Farm's
4 conduct violated any provision of this statute.

5 11. Ward cannot recover punitive damages as a matter of law because Ward's claims
6 for bad faith and violation of NRS 686A.310 have been adjudicated in favor of State Farm.

7 12. There are no facts or inferences from facts which would support a jury finding by
8 clear and convincing evidence that State Farm engaged in any conduct which would support the
9 imposition of punitive damages.

10 Based on the foregoing, the Court has determined that there are no genuine issues as to any
11 material fact and that State Farm is entitled to judgment as a matter of law on Plaintiff's second
12 claim for relief (for Violations of the Unfair Claims Practices Act) and Plaintiff's third claim (for
13 relief for Breach of the Covenant of Good Faith and Fair Dealing). Plaintiff's claim for punitive
14 damages is moot and therefore dismissed.

15 Therefore, judgment is entered in favor of State Farm on Plaintiff's second cause of action
16 (asserting Violation of the Nevada Unfair Claims Practices Act) and Plaintiff's third cause of
17 action (asserting Breach of the Covenant of Good Faith and Fair Dealing), and those claims are
18 dismissed with prejudice. Similarly, Plaintiff's demand for punitive damages is dismissed with
19 prejudice.

20 DATED this 8th day of July.

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UNITED STATES DISTRICT JUDGE
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